IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

RICHARD LEE BUCKLE,

Respondent.

_____/

Case No. 94,027

TFB No. 98-11,359 (12A)

ANSWER BRIEF

OF

THE FLORIDA BAR

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SYMBOLS AND REFERENCES

In this Brief, The Florida Bar will be referred to as "The Florida Bar," or "the Bar." The Respondent, Richard Lee Buckle, Esq., will be referred to as "Respondent."

"RR" will refer to the Report of Referee in Supreme Court Case No. 94,027, dated May 12, 1999.

"Tr. 1" will refer to Volume I of the Transcript of testimony before the Referee in the disciplinary case styled THE FLORIDA BAR v. RICHARD LEE BUCKLE, TFB No. 98-11,359 (12A), dated March 25-26, 1999. "Tr. 2" will refer to Volume II of the same.

"Rule" or "Rules" will refer to the Rules Regulating The Florida Bar. "Standard" or "Standards" will refer to the Florida Standards for Imposing Lawyer Sanctions.

STATEMENT OF THE CASE AND OF THE FACTS

On May 5, 1997, Donald L. Spaulding ("Spaulding") raped a female resident of Bradenton, Florida on his boat. (Tr. 2, pg. 302, lines 2-4 and 24-25.) A month later, on June 2, 1997, Ms. Lydia Gibas, a Canadian citizen who then was vacationing in Florida, met Spaulding and also went out on his boat with him. The two spent the day on the intracoastal waters around Sarasota County, and, when night fell, Spaulding attempted to perpetrate a similar criminal act on Ms. Gibas. She fended off Spaulding's advances and was able to exit his vessel. Ms. Gibas reported what had occurred to local law enforcement authorities, who arrested Spaulding. (Respondent's Exh. 4)

On June 9, 1997, Spaulding hired Respondent, who interviewed him regarding Ms. Gibas' allegations. Shortly thereafter, Respondent also became aware of allegations against Spaulding regarding the aforesaid rape occurring on his boat the previous month. (Tr. 2, Page 415, lines 6-12.) Before any formal charges were filed, Respondent telephoned the rape victim, who informed that she desired no such contact by her assailant's attorney. (Tr. 2, Pg. 306, lines 3-14.) Thereafter, on June 18, 1997, Respondent wrote the rape victim a letter, which she received. (Bar's Exh. 4.) In the letter Respondent threatened to contact

every man with whom the rape victim had a prior business relationship. She was offended by Respondent's tactics, especially by the letter she received, and its religious enclosures. (Tr. 2, Page 315, lines 5-16.) A week later, on June 25, 1997, Respondent repeated this conduct with Ms. Gibas; i.e., he telephoned her and was informed that she desired no such contact; then he sent her a letter enclosing religious tracts. (Bar's Exh. 1, Pages 7-9.) The transmittal of that letter with enclosures forms the basis of the instant disciplinary matter. (See Bar's Exhibit 2.) Respondent's similar prior conduct towards the rape victim was received as evidence of an aggravating circumstance. (Tr. 2, Page 314, lines 6-16.)

Ms. Gibas considered the subject letter to be humiliating and intimidating. (Bar's Exh. 1, Page 13, line 24.) The referee found the subject letter to be humiliating and intimidating on its face to a reasonable woman standing in Ms. Gibas' place. (RR at 2.) Moreover, the referee found that Respondent's inclusion of religious materials exacerbated the effect of receiving the letter, in that they further offended Ms. Gibas. (RR at 3; Tr. 1, Page 189, lines 9, 21.) The religious materials included comparisons of Respondent's religion (Christianity) with other major organized religions, including Judaism, Islam, and

Buddhism, with the message being that all other faiths were insufficient and unavailing when compared with Christianity. (Tr. 1, Page 191, line 22 et seq.)

Taken as a whole, Respondent's correspondence violated Rule 4-4.4, Rule 4-8.4(a), and Rule 4-8.4(d), Rules Regulating The Florida Bar. (RR at 3.) Given all the aggravating factors, including Respondent's prior disciplinary history and his similar misconduct towards the rape victim, the referee recommended that: a) Respondent apologize to the rape victim and to Ms. Gibas through The Florida Bar, which letters the referee would approve beforehand; b) Respondent's license should be suspended for thirty (30) days; and c) Respondent be placed on probation for two (2) years, during which he shall not send religious tracts in connection with his practice of law (per his admitted practice) to any litigants or witnesses, or to their counsel. (RR at 4.)

SUMMARY OF THE ARGUMENT

The referee's factual findings are supported by clear and convincing evidence of a competent and substantial nature. The findings are accorded great weight and carry a presumption of correctness, and Respondent has failed to present any sufficient reason why any of the findings should be reversed.

The referee specifically found Respondent's explanation of his motive in drafting and sending the subject correspondence to lack credibility. (RR at 2.) The referee's findings in this regard likewise are presumed correct, and, though Respondent seeks to reprise his explanation in this appeal, this Court cannot see or hear the explanations as originally offered, as did the referee. Respondent has failed to rebut the presumed correctness of the referee's determination that his explanation lacked credibility.

Respondent complains that the trial court disregarded the testimony of two attorney-witnesses whom he tendered as experts, but who failed to impress the court with their qualifications and/or opinions. Just as the referee's factual findings are presumed correct, his determinations regarding the credibility of witnesses are likewise presumed to be correct. The Bar asserts that the expert witnesses' respective qualifications were

insufficient, and that their opinions were not objectively sustainable; thus the referee committed no error by giving little weight to them.

The Bar argues that the recommended sanction is appropriate given the facts, the aggravating factors, and the Respondent's prior disciplinary history, and that the referee's recommended sanction fulfills the purposes of Bar discipline. Respondent argues that certain prior cases involving attorneys who sent offensive correspondence resulted in no more than a public reprimand. However, Respondent ignores the aggravating factor of his similar misconduct directed toward Spaulding's rape victim, and he refuses to recognize the wrongful nature of his conduct toward Ms. Gibas. Respondent's argument of the case law lacks merit because it does not address the instant aggravating circumstances found by the referee, which include his two (2) prior instances of formal discipline and his substantial experience in practicing law. Moreover, Respondent's misconduct is more egregious than the conduct reported in the cases upon which he seeks to rely. This fact, coupled with the aggravation, makes the recommended discipline appropriate.

Finally, the issue of the recommended probation and the condition under which Respondent must serve it is more properly

cast as: *whether this Court may preclude an attorney from distributing religious speech by and through the license it has granted him, as a term of disciplinary probation.* When this Court grants a license to practice law it creates an officer of the courts of this state; by practicing law, Respondent acts under color of the judicial branch of the state. When Respondent uses his license as the means by which he espouses his religious views, and directs those views to witnesses, litigants, other attorneys and judicial officers, such conduct can violate standards of professional conduct under certain factual circumstances, as found here. It also can exceed the parameters of licensure in a general sense, because the recipients of the religious speech are a captive audience, in that they may not reasonably ignore the legal matters within which Respondent encloses his religious speech.

As for Respondent's argument that this Court cannot constitutionally restrain him from using his state-granted law license as the platform from which he promotes his particular religion, the Bar counters that if such conduct interferes with the administration of justice in this state, then this Court has a compelling state interest in preventing same. Because Respondent transmits religious speech by and through the

privilege granted by this Court, it is the Bar's position that this Court may properly enjoin him from doing just that -- leaving him free to distribute religious speech using any means other than his license to practice law.

ARGUMENT

I. THE REFEREE'S FACTUAL FINDINGS ARE SUPPORTED BY COMPETENT, SUBSTANTIAL EVIDENCE.

Respondent contends that the referee failed to properly consider the opinions of two attorneys whom Respondent called as expert witnesses. Respondent offers no evidence of this asserted dereliction, save for the fact that the referee's report makes no mention of the opinions. It is much more likely that the referee duly considered the opinions and deemed them insufficient when weighed against the factual evidence.

The respective qualifications of each expert witness offered by Respondent were insufficient to clearly and convincingly establish the person as qualified to give expert testimony on the particular legal ethics at issue in this case. (see Tr. 1, Pages 87-97; and Tr. 1, Pages 105-109.) In sum, the testimony amounted to little more than personal opinions given by licensed attorneys who know the Respondent. Respondent argues that, because the Bar chose not to offer any controverting opinion testimony, the referee erred by not slavishly adopting as competent and substantial the opinion evidence Respondent presented.

Simply stated, opinion evidence is of dubious benefit in a factual scenario as uncomplicated and uncontroverted as the instant one. Respondent admitted drafting and sending the

subject three-page letter with enclosed religious tracts to the victim of an attempted sexual assault. The victim testified that she was humiliated, intimidated, and scared by receiving the subject letter (Bar's Exh. 1, Page 13, lines 15-18), and that Respondent's inclusion of religious materials with the letter made her feel like Respondent "was using God as a means to maybe make me feel guilty about pursuing the charges." (Bar's Exh. 1, Page 27, lines 15-20.) Those facts establish harassment and intimidation of an adverse witness from a psychologic as well as a religious perspective. Thus, under a Rule 4-8.4(d) calculus, the pertinent inquiry is whether her reaction was reasonable, under an objective, reasonable person standard. This requires a largely intuitive analysis of the factual evidence. As such, expert testimony is not especially insightful or instructive, unless it comes from an expert in human behavior -- which both expert witnesses were not. The referee found that the subject letter was objectively humiliating and intimidating. (RR at 2.)

Respondent wanted his experts to add weight to his assertion that his intentions were honorable and reasonable in drafting and sending the subject correspondence. However, under a 4-8.4(d) analysis, the Bar needed to prove only that Respondent's conduct arose from "callous indifference", which most certainly was

proven here. Respondent admitted that he had judged Ms. Gibas to be a "woman of low morals" prior to sending her the letter at issue. (Tr. 1, Page 23, line 23.) Though Respondent could not justify this moral judgment (see Tr. 1, Page 134, line 18 et seq.), his attitude is apparent in the letter he wrote. Respondent also testified that Ms. Gibas needed to be "saved." (Tr. 1, Page 140, lines 13-24.) Expert testimony cannot clarify such telling admissions regarding Respondent's actual intent.

Respondent also sought to prove, through the opinion evidence, that his sending of the subject correspondence had a "substantial purpose" under a Rule 4-4.4 calculus. Respondent's position is that his substantial purpose in sending the subject letter was to ask the alleged crime victim to voluntarily supply all sorts of private, confidential, and personally embarrassing informal discovery upon receiving the letter. According to Respondent, the letter was intended to be a legitimate request for information; thus it had a substantial purpose. Respondent reasserts this defense on appeal, and implicitly argues that his "substantial purpose" was clearly and convincingly established by the two experts opining that the letter had a substantial purpose. This defense and the attempt to establish it through expert testimony is transparent. The referee expressly found it

to be not credible, which presumably is why he did not consider the opinion testimony supporting the same worthy of mention. (RR at 3).

In disciplinary proceedings, the referee's findings are accorded substantial weight, and should not be overturned unless clearly erroneous or lacking in evidentiary support. The Florida Bar v. Wagner, 212 So. 2d 770 (Fla. 1968). Respondent has failed to challenge the referee's factual findings in any way sufficient to warrant their reversal.

II. THE RECOMMENDED SANCTION IS APPROPRIATE IN VIEW OF RESPONDENT'S MISCONDUCT AND PRIOR DISCIPLINARY RECORD.

The Bar contends that the referee gave due and sufficient consideration to the aggravating factors in determining the recommended sanction. As a result, the recommended sanction achieves the objectives of Bar discipline, because it is consistent not only with the adjudicated misconduct and the factors aggravating it, but also with the relevant case law, and the Florida Standards for Imposing Lawyer Sanctions.

The objectives of Bar discipline, the Standards, the case authority, and the ends of justice are all well served by imposing on Respondent the recommended 30-day suspension followed by a two (2) year probation, during which Respondent shall be

prohibited from using his state-granted law license as the means by which he delivers religious speech to persons who cannot reasonably decline or refuse such correspondences -- i.e., opposing litigants, witnesses, and attorneys.

While a referee's recommendation regarding discipline is persuasive, this Court has the ultimate responsibility to determine and order the appropriate sanction in any given case. The Florida Bar v. Reed, 644 So. 2d 1355, 1357 (Fla. 1994). A Bar disciplinary action must serve three purposes: the judgment must be fair to society, it must be fair to the attorney, and it must be severe enough to deter other attorneys from similar misconduct. The Florida Bar v. Lawless, 640 So. 2d 1098, 1100 (Fla. 1994).

In imposing attorney discipline, this Court must consider a respondent's previous discipline, and increase the discipline where appropriate. The Florida Bar v. Bern, 425 So. 2d 526, 528 (Fla. 1982). This case reveals that Respondent has received two (2) prior admonishments for professional misconduct, both occurring in 1993. (RR at 5.)

Respondent relies on The Florida Bar v. Johnson, 511 So. 2d 295 (Fla. 1987), and The Florida Bar v. Sayler, 721 So. 2d 1152 (Fla. 1998), as authority for imposing a public reprimand in this

case. However, Respondent's sending of the subject letter is more egregious and more reprehensible than the sending of the letters in those cases. In Johnson, the offending correspondence was sent merely in an attempt to secure the lawyer's fee. In Sayler, the attorney sent to his opposing counsel in a workers compensation matter copies of then-recent news articles regarding violence perpetrated by claimants against lawyers defending workers compensation claims. The referee found that the articles bore no relevance to the case at hand, and that they were sent to intimidate or frighten the recipient. Id. at 1154. This Court imposed a public reprimand and placed Mr. Sayler on probation for six months, during which he was to undergo a mental health evaluation. Id. at 1155. It is important to note that neither Johnson nor Sayler involved a respondent who previously had been disciplined. Here, Respondent has two (2) prior disciplines.

Moreover, Respondent avoids any discussion of the instant aggravating circumstances found by the referee, which militate for sterner discipline. The most significant aggravating fact is the similar fact evidence involving Respondent's conduct toward the woman whom his client had raped. This constitutes both a pattern of misconduct and multiple offenses -- neither of which appear in the Johnson or Sayler opinions.

The aspect of this case that most distinguishes it from Johnson and Sayler, as regards the appropriate sanction, is Respondent's motivation to intimidate Ms. Gibas into giving up her criminal complaint against Respondent's client. Though this finding was not expressly made by the referee, the sum and substance of the published findings lead only to that conclusion. As stated, Johnson evidenced merely a bizarre attempt to collect a legal fee, whereas Sayler involved an ongoing clash between opposing lawyers who disliked one another, culminating in an oblique reference to lawyers who died violently. These seem petty annoyances when compared with the appalling, overt scare tactic used by Respondent against Ms. Gibas, a citizen of a foreign country who had been victimized criminally while visiting Florida. Respondent's conduct was a much more palpable attempt to interfere with the administration of justice than either Mr. Johnson or Mr. Sayler made. The fact that his client actually was guilty of victimizing these two women makes Respondent's misconduct even more reprehensible.

Standard 6.30, Florida Standards for Imposing Lawyer Sanctions, states that "the following sanctions are generally appropriate in cases involving attempts to influence a witness..." Standard 6.32 is therefore the appropriate standard

to consider in determining an appropriate sanction in the instant case. Standard 6.32 states: “Suspension is appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party, or causes interference or potential interference with the outcome of the legal proceeding.”

Here, Respondent attempted to intimidate from afar a female citizen of another country who already had been terrorized by his client. Aggravating that conduct is the fact that he also attempted to intimidate a local woman whom his client had raped. The purpose of Respondent’s tactics is not difficult for a thinking person to discern: he intended to harass, humiliate or intimidate these crime victims into giving up their quest for justice. This mind-set alone militates strongly for suspension as an appropriate sanction.

Moreover, the referee determined that Respondent owes these two women a written apology for his conduct, and the Bar heartily agrees with that remedial condition. If Respondent cannot or will not fashion and submit an acceptable written apology to each woman by the expiration of his 30-day suspension, then his suspension should continue until and unless he does so.

Given Respondent's instant misconduct, the actual or potential harm resulting therefrom, his prior misconduct, and the other aggravating factors present, the threefold objectives of Bar discipline will be adequately served by this Court's approval of the referee's recommended sanction.

III. THIS COURT MAY, AS A TERM OF PROBATION, PROHIBIT RESPONDENT FROM USING THE LICENSE IT GRANTED HIM AS THE MEANS THROUGH WHICH HE TRANSMITS RELIGIOUS SPEECH TO LITIGANTS, WITNESSES, AND OTHER ATTORNEYS.

Respondent casts the recommended probation term as an impermissible infringement of his First Amendment right to practice his chosen religion. However, as is argued below, this issue is more properly analyzed under the First Amendment's Establishment Clause, and not under the Free Exercise Clause. The text of the First Amendment is as follows:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech..."

U.S. Const. amend. I. The facts of this case present an intersection of speech and religion. Respondent admits that he encloses pre-printed religious tracts with each and every correspondence that he sends out in his capacity as a practicing attorney. He does so without regard to the circumstances and without reflection as to the particular circumstance. (Tr. 1,

Page 182, lines 1-9.) Respondent made no inquiry of himself as to whether or not it was appropriate for him to enclose the instant religious materials with the letter to Ms. Gibas. (Tr. 1, Page 181, lines 9-17.) At trial the Bar argued, and the referee found, that under some circumstances -- most particularly, the instant one -- it clearly can be inappropriate to enclose religious speech with an attorney's correspondence. (RR at 3.)

In analyzing the distinctions between engaging in religious activity (exercising one's religion) and religious speech (distributing religious literature) the legislative history of the Religious Freedom Restoration Act (RFRA) (42 U.S.C. §2000bb-1) is instructive. The supporters of RFRA dealt with the question of whether the Act's statutory accommodations for religious activity should extend to religious speech as well. (RFRA requires government to accommodate "religious activity" when it conflicts with generally applicable governmental laws and regulations.) While RFRA's supporters did not exclude religious speech from the definition of "protected religious exercise", they also did not specifically shield it from the operation of content-neutral laws concerning the time, place, and manner of expression. Thus, RFRA's legislative history states that religious speech is subject to reasonable time, place and manner

restrictions like other speech. 1993 U.S. Code Cong. & Admin. News 1892, 1903 (“where religious exercise involves speech, as in the case of distributing religious literature, reasonable time, place and manner restrictions are permissible consistent with first amendment jurisprudence.”) In other words, the promulgators of RFRA did not elevate religious speech to a level higher than other forms of speech or expression.

It is important to realize that by the instant enclosures Respondent was not engaging in religious activity but religious speech -- he was not practicing his religion but rather marketing it -- and it is this distinction that pushes Respondent’s conduct away from the First Amendment’s Free Exercise Clause and toward the Establishment Clause, for Respondent admits that he routinely encloses such religious speech solely *in connection with his practice of law*. (Tr. 1, Page 179, lines 6-12; Page 180, lines 6-9.) It is axiomatic that Respondent can pursue his “business”, i.e., the practice of law, only by virtue of the license this Court has granted him. Not only does he use his law license as the “platform to spread” his particular dogma, he does so in his capacity as an officer of the courts of this state -- as enclosures within the court’s business. In so doing, he delivers religious speech to people who cannot reasonably decline or

refuse his transmittals -- because the speech is enclosed within attorney correspondence and pleadings which the addressees cannot refuse, or can refuse only at their peril. Often, including the two instances shown here, Respondent delivers this religious speech directly to people's homes. In every instance, and at every opportunity, Respondent sends this religious speech along with whatever legal matter likewise is being sent. He makes no exceptions to this practice, as this Court must notice by its review of the enclosures Respondent has transmitted to it as part of this appeal.

What are opposing litigants to think when, in representing a client, Respondent sends his religious messages not only to them, and their counsel, but to witnesses, and to the presiding judge? What is a recipient like Lydia Gibas to think of this practice? Is it unreasonable for her to think that Respondent was "trying to use God as a means to maybe make me feel guilty about pursuing the charges"? Is there not a parade of horribles to be imagined by commingling the transmittal of legal documents with the conveyance of religious messages?

The Bar's position in this matter is simple: Respondent may proselytize his faith all he wishes as long as he does not use his position as an attorney, and his license to practice law, as

the bully pulpit from which that speech is launched. He may purchase mailing lists, lease time on a television station, or stand on street corners to market his religion. However, when he does so as part of every communication he sends as an attorney, using his letterhead, within pending legal matters, and without the consent of the recipients, he exceeds the parameters of his license. In doing so Respondent is promoting a certain religion under color of the authority and privilege granted him by the judicial branch of this state. The recipients are not free to ignore his correspondence, so they must accept it.

Because Respondent's enclosures constitute religious speech, and not the practice of religion, per se, it is permissible for this Court to restrain him from promulgating the speech in connection with his practice of law, as a matter of professional conduct and professional discipline. cf. Sayler at 1154-55 (holding that attorney's conduct in sending offensive, reprinted articles to other counsel "was not protected by the First Amendment to the United States Constitution").

This Court already governs and limits Respondent's First Amendment rights extensively, and in various ways, pursuant to his licensure: e.g., he may not reveal client confidences (Rule 4-1.6); he must communicate with his clients (Rule 4-1.4); he

must not provide false or misleading evidence to a tribunal (Rule 4-3.3); he must not submit irrelevant or misleading arguments to a court (Rule 4-3.4); he must not threaten criminal charges or bar complaints solely to gain advantage in a civil matter (Rule 4-3.4; he must not make false statements of law or fact (Rule 4-4.1); he may not try his legal cases in the public media (Rule 4-3.6); he may not make certain agreements restricting his right to practice (Rule 4-5.6); and his rights of commercial speech are narrowly and extensively restricted (see Rules 4-7.1, 4-7.2, 4-7.3, and 4-7.4) cf. The Florida Bar v. Went-For-It, Inc., 515 U.S. 618 (1995) (upholding ban on direct mail solicitations from lawyers to accident victims in an opinion that stressed the state's historic role in regulating the legal profession).

Most pertinently, Respondent's professional licensure restrains him from engaging in conduct "in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage or humiliate litigants, witnesses, jurors, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical

characteristic." (Rule 4-8.4(d) (emphases added)). Respondent has been found guilty of violating this very rule by the letter that he sent to Ms. Gibas, and by enclosing the instant religious tracts that offended Ms. Gibas. Assuming this Court upholds the referee's recommendation of finding of guilt in Respondent's violation of this rule by and through his enclosure of religious tracts, Respondent cannot be heard to argue that this Court is without authority to further prevent him, as part of its discipline, from continuing to do the same or similar to others for a probationary period of time. Moreover, if the Court deems that Respondent's practice of indiscriminately transmitting his religious speech to litigants, witnesses, court personnel, and other lawyers in connection with his practice of law is not permissible under the Rules of Professional Conduct, it may enjoin him from that practice.

In Capitol Square Review Board v. Pinette, 515 U.S. 753 (1994) a majority of the U.S. Supreme Court reaffirmed that, where particular religious speech is provided or permitted under color of state authority, the appropriate Establishment Clause question is whether a reasonable person would perceive that the state government had endorsed the religious message. Id. at 779 (O'Connor, J., concurring). A licensed attorney is a creature of

the state, as is the law itself; and only an attorney may practice law, for the law excludes all others from doing so. As such, an attorney holds an office of trust, similar to, but not the same as, a person holding civil authority. Thus, when Respondent engages in the practice of law, he is an official of this state, in a unique way, and when he sends correspondence in that singular capacity he does so under color of this Court and this state's laws.

What this Court must decide is whether, and to what degree, Respondent may permissibly inject religious speech into what is akin to, or in essence is, a workplace environment. To the extent that this Court allows him to do so, the question then becomes to what extent is the Court to be viewed as tacitly endorsing Respondent's particular brand of religious speech, under a Pinette analysis. Because the essence of any Court is to be viewpoint-neutral, Respondent has created a dilemma for this Court by virtue of the fact that the Court has the authority to directly regulate his professional conduct. Accordingly, by merely deciding this issue, this Court will either: a) decline to enjoin Respondent's practice and thereby tacitly endorse his particular religious speech by affirming his right to espouse it by and through his licensure; or b) order Respondent to cease his

practice of commingling his professional obligations with his religious speech and thereby declare that this Court cannot and does not endorse those views. cf. Allegheny v. ACLU, 492 U.S. 573 (1989) (forbidding official endorsements of religion through prominently positioned religious symbols on public property); and Lee v. Weisman, 505 U.S. 577 (1992) (forbidding the state to sponsor, direct, or coerce participation in a religious exercise).

CONCLUSION

For all the foregoing reasons, the discipline recommended by the referee in this case should be approved, and Respondent should receive a thirty (30) day suspension and probation for two (2) years, the terms of which would require Respondent to cease enclosing religious tracts in connection with his license to practice law to any litigant, witness, court personnel, or other lawyer. Further, the length of Respondent's suspension shall be dependent on his submission of letters of apology to the two crime victims, which apologies are deemed acceptable by the referee, but in no event will Respondent's suspension be for less than 30 days. Lastly, Respondent shall pay costs as recommended.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies of The Florida Bar's Answer Brief has been furnished by Airborne Express to Debbie Causseaux, Acting Clerk, The Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; a true and correct copy by regular U.S. Mail to Layon F. Robinson II, Esq., Counsel for Respondent, at 442 Old Main Street, Bradenton, Florida 34205, and a copy by regular U.S. Mail to John Anthony Boggs, Esq., Staff Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, on this _____ day of December, 1999.

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